

STATE OF INDIANA
Board of Tax Review

PAUL AND JANET LINDEMANN,)	On Appeal from the Marion County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 49-800-00-1-5-00646
MARION COUNTY PROPERTY TAX)	Parcel No. 8057887
ASSESSMENT BOARD OF APPEALS)	
And WASHINGTON TOWNSHIP)	
ASSESSOR,)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

1. Whether the grade of the dwelling is correct.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Paul Lindemann (Petitioner) filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on May 14, 2001. The Marion County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 is dated April 27, 2001.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 8, 2001, before Hearing Officer Paul Stultz. Testimony and exhibits were received into evidence. Mr. Lindemann represented himself. No one appeared to represent the PTABOA or the Washington Township Assessor's Office.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board's Exhibit A. Notice of Hearing on Petition is labeled Board's Exhibit B. In addition, the following exhibits were submitted to the State:
Petitioner's Exhibit 1 – Package of documents containing a four (4) page statement and the following exhibits labeled by the Petitioner as:
 - Exhibit A - Copy of Form 130 filed January 3, 1996, #8-057887
 - Exhibit B - Copy of County Board of Review (County Board) determination dated October 25, 1996
 - Exhibit C - Copy of Form 131 RP filed November 2, 1996, #8-057887
 - Exhibit D - Copy of County Board determination dated January 3, 1997
 - Exhibit E - Copy of Form 11 dated December 15, 2000
 - Exhibit F - Copy of Form 130 filed January 24, 2001, #49-800-00-00646
 - Exhibit G - Copy of Form 115 dated April 27, 2001
 - Exhibit H - Copy of Form 131 May 14, 2001
 - Exhibit I - Copy of Tax Court Case No. 49T10-9108-SC-00044, *David Leehaug v. State Board of Tax Commissioners*
 - Exhibit J - Copy of Petitioner's list of grade factors characteristic of a "B" grade

Exhibit K - Copy of Petitioner's list of problems (17 items) with the subject dwelling

Exhibit L - Copy of floor plan of subject dwelling

5. The subject property is a residence located at 8132 Meadowbrook Drive, Indianapolis, Washington Township, Marion County.
6. The Hearing Officer did not view the subject property.
7. A copy of a proof of mailing received by the State on July 5, 2001 shows the Notice of Hearing for the appeal under review was mailed to the Washington Township Assessor and the Marion County Assessor on July 3, 2001. The said notices were not returned to the State as "undeliverable". Nor did the State or the Hearing Officer receive a request for continuance from either party. Proof of Mailing is labeled Board's Exhibit C.

Issue No. 1- Whether the grade of the dwelling is correct.

8. Mr. Lindemann presented a history of the appeals that have been filed on the subject residence. *Petitioner's Exhibit 1.*
9. It is the Petitioner's contention that the grade of the dwelling should be "B-1".
10. The Petitioner is of the opinion the Washington Township Assessor did not have the authority to change the grade factor that was determined by the County Board. The Petitioner supports this with a Tax Court case *David Leehaug v. State Board of Tax Commissioner*, which in his opinion prohibits an assessor from increasing the grade of a home without inspection of the interior, and to do so would be arbitrary and capricious. *Petitioner's testimony & Petitioner Exhibit 1-1.*

11. The Petitioner added the reason stated for the change in grade on the Form 11, was to make the grade in accordance with the rest of the neighborhood. The Petitioner opined grade factors are unique to each structure and are not dependent upon other houses in the neighborhood. According to the Petitioner, the Washington Township Assessor admitted this error at the County Hearing. *Petitioner's testimony & Petitioner's Exhibit 1- E.*
12. The Petitioner presented an exhibit of a B grade house according to 50 IAC 2.2-7 along with a list of problems with the home faced by the Petitioner. *Petitioner's Exhibits 1- J & 1-K.*

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. 50 IAC 17-5-3, Form 131 Instructions, and Ind. Code § 6-1.1-15-1. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and –2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189,

1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercise and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id*. Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d.

890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence.² Charles H. Koch, Jr. at § 5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning

the error raised. Accordingly, the Tax Court will not reverse the State's final determination even though the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Issue No. 1- Whether the grade of the dwelling is correct.

18. The home under appeal was graded "B+2" by the local officials for the assessment year March 1, 2000. The Petitioner seeks a reduction in the grade to a "B-1" for the same assessment year.
19. The approach to valuing residential homes is primarily found in 50 IAC 2.2-7. The approach to valuing homes is the application of various models to represent typical types of construction. "A model is a conceptual tool used to replicate reproduction costs of given structures using typical construction materials." 50 IAC 2.2-7-6. The model assumes that there are certain elements of construction

defined as specifications. These specifications create an average or “C” grade home. *Id.*

20. “Grade” is defined as the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
21. Not all residences in the State are average or “C” grade homes. Therefore, grade factors are applied to account for differences in construction specifications and quality of materials and workmanship between the models in the Regulation and the home being assessed. *Clark*, 694 N.E. 2d at 1236, n. 6. The major grade classifications are “A” through “E”. 50 IAC 2.2-7-6 (d)(1). The cost schedules in the Regulation reflect the “C” grade standards of quality and design. The following grade factors (or multipliers) are assigned to each major grade classification:

“A” grade	160%
“B” grade	120%
“C” grade	100%
“D” grade	80%
“E” grade	40%

50 IAC 2.2-7-6 (e).

22. Intermediate grade levels are also provided for in the Regulation to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-7-6 (g).
23. The determination of the proper grade factor requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). The selected grade represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).

24. Subjectivity is used in the grading process. For assessing officials and taxpayers alike, however, the Regulation provides indicators for establishing grade. The text of the Regulation provides indicators for establishing grade. The text of the Regulation (see 50 IAC 2.2-7-6 (d)), the grade specification table (50 IAC 2.2-7-6 (b)), and graded photographs (50 IAC 2.2-7-10) all provide guides for establishing grade.
25. The Tax Court invalidated the Cost Tables segment of the Regulation and held that the Regulation did not contain ascertainable standards. *Town of St. John III* at 338. Nevertheless, the Indiana Supreme Court and the Tax Court did not throw out the whole system immediately. *Town of St. John V*, 702 N.E. 2d at 1043; *Town of St. John III*, at 398 & 99; *Whitley*, 704 N.E. 2d at 1121. Instead, the property tax system is now administered in accordance with the current, true tax value system and existing law. *Id.*
26. Regarding grade issues, the Tax Court recognizes the difficulty in establishing whether a home has a “cheap quality interior finish with minimal built-in features” or is “devoid of architectural treatment”. *Whitley*, 704 N.E. 2d at 1119. But, the taxpayer has the responsibility to provide probative and meaningful evidence to support a claim that the assigned grade factor is incorrect. *Bernacchi v. State Board of Tax Commissioners*, 727 N.E. 2d 1133 (Ind. Tax 2000); *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999; *Whitley*, *supra*.
27. The Washington Township Assessor’s Office determined the grade on the subject house to be a “B+ 2” for the 2000 assessment year. The Petitioner was given written notice of this change by way of a Form 11 dated December 15, 2000. Mr. Lindemann protested this change and claimed that the local officials cannot change a 2000 assessment if the County Board had made a determination for the subject property in 1995.

28. Mr. Lindemann supported his claim by submitting a copy of an Indiana Tax Court case, *David Leehaug v. State Board of Tax Commissioner* (Petitioner's Exhibit 1 – I); a list of "B" grade characteristics for a dwelling; and a list of problems associated with the subject structure.
29. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
30. With regard to the Tax Court case of *David Leehaug v. State Board of Tax Commissioner*, it is the Petitioner's opinion this case prohibits an assessor from increasing the grade without an inspecting the interior of a home. A review of the Tax Court's opinion made by Judge Fisher for this 1989 appeal, finds the Court determined in part that "the application of a "A-2" grade to the Leehaug's house without considering the interior lacks a reasonable sound basis . . ." The question becomes whether it is possible to "consider" the interior without actually inspecting the interior.
31. There was no evidence presented to indicate that the interior of the home was or was not taken into "consideration" other than the Petitioner's testimony that no one inspected the interior of the home.
32. In any case, the Petitioner has not shown the local officials determined the grade incorrectly in lieu of an interior inspection. In property tax appeals, the Petitioner has the responsibility to provide probative and meaningful evidence to support his claim that the grade factor assigned by the local officials is incorrect.
33. It should be noted the case referenced was for the 1989 general reassessment. This case was also "remanded" back to the State for further action. The Petitioner does not present a copy of the "remanded" case determination by the State as part of their evidence in support of the change in grade.

34. The Petitioner also takes the position that the Township officials acted without authority in changing the Petitioner's assessment. However, Ind. Code § 6-1.1-9-1 states, "If a county auditor, county treasurer, township assessor, county assessor, or county board of review believes that any taxable tangible property has been omitted from or undervalued on the assessment rolls or the tax duplicate for any year or years, the official or board shall give written notice under IC 6-1.1-3-20 or 6-1.1-4-22 of the assessment or increase in assessment. The notice shall contain a general description of the property and a statement describing the taxpayer's right to file a petition for review with the county board of review under IC 6-1.1-15-1."
35. On this issue, the local official acted properly and by statute in making the change and by notification of the Petitioner (Petitioner's Exhibit 1-E). Based on the local officials notification of the change in assessment to the Petitioner, the Petitioner then filed this appeal under review (Board Exhibit A).
36. In addition, the fact that the County Board applied a grade factor of "B-1" for 1995 would have no bearing on the change made for tax year 2000. In Indiana, each tax year is separate and distinct. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713 (Ind. Tax 1995).
37. The Petitioner also argued for a grade reduction based upon the list of characteristics for a "B" grade structure found in 50 IAC 2.2-7-6-(d)(2)(Petitioner's Exhibit 1 – J) and a list of "problems" (Petitioner Exhibit 1 – K) associated with the home.
38. The list of characteristics for a "B" grade structure does nothing more than present, verbatim, the list found within the Regulation. The Petitioner presents no documentation that would support his conclusion that these are the features found within his home. The Petitioner does not submit any photographs of these purported "B" features. Such a "list" by the Petitioner is self-serving at best and is

not representative of probative evidence that the local assessing officials misapplied the tax system in this case.

39. The Petitioner's list of "problems" associated with the subject structure is an attempt by the Petitioner to equate these "problems" with grade. It is the Petitioner's opinion that these "problems" would be unusual for a custom-built house.
40. A review of the Petitioner's "problem" list shows many of those items listed to be associated with normal wear and tear, settling or normal required maintenance. For example, "problems" caused by power outages (weather) or cracks in concrete have nothing to do with the grade of the home.
41. The Petitioner has not met the burden outlined in ¶'s 9-13 above.
42. The Petitioner failed to identify other homes that were similar to the subject home under appeal and failed to show that the subject was receiving disparate treatment when compared to those homes. The record is devoid of any such comparison of properties. The Petitioner also failed to present probative evidence in support of his claim.
43. For all the reasons set forth above, the Petitioner failed in their burden to show the Township Assessor erred in determining the grade of the subject dwelling. Accordingly, there is no change in the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review